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Reply to: **Lansing**  
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March 31, 1997

## VIA FAX and FEDERAL EXPRESS

**Mr. William F. Caton**  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, D.C. 20554

**Re: Reply Comments of The Small Cable Business Association; Reply Comments to the Initial Regulatory Flexibility Analysis; MM Docket No. 95-176**

Dear Mr. Caton:

We enclose for filing in MM Docket No. 95-176 the above-referenced documents. We have enclosed the originals and eleven copies of each for distribution. We also enclose one copy of each that we ask that you return to us in the enclosed envelope after they have been stamped "Received". We also transmitted the documents today to the Commission by fax.

We also include a copy of the documents on disk.

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**Mr. William F. Caton**  
March 31, 1997  
Page 2

If you have any questions or need additional information, please contact us.

Very truly yours,

**HOWARD & HOWARD**



Christopher C. Cinnamon

Enclosures

cc: Chairman Reed Hundt  
Commissioner James H. Quello  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Meredith Jones  
John E. Logan  
William Johnson  
Marcia Glauberman  
Rick Chessan  
David D. Kinley  
Matt Polka  
Eric E. Breisach

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MM Docket No. 95-176

**Attorneys for the  
Small Cable Business Association**

## **REPLY COMMENTS TO THE INITIAL REGULATORY FLEXIBILITY ANALYSIS**

The Small Cable Business Association ("SCBA") files these reply comments in response to the Initial Regulatory Flexibility Analysis in *Notice of Proposed Rulemaking*, MM Docket No. 95-176, FCC 97-4 (released January 17, 1997) ("*Notice*"). SCBA has filed separate reply comments that detail the significant adverse impact of the proposed rules on small cable operators and small cable systems. SCBA's reply comments also propose significant alternatives that will minimize the burdens of closed captioning regulations on small cable in a manner consistent with the objectives of Section 713.

SCBA agrees with the Commission's analysis that the proposed rules will have a significant impact on a substantial number of small businesses, including small cable.<sup>1</sup> As detailed in SCBA's comments, the proposals for implementing Section 713 will significantly affect small cable operators and small cable systems. SCBA also agrees with the Commission's analysis that the *Notice* seeks comment on mechanisms that will exempt small entities from captioning requirements that would create an economic burden. The *Notice* also seeks comment on procedural issues concerning individual exemptions.

The IRFA is incomplete in at least one respect. The Commission tentatively concludes that small providers should not receive an exemption as a class due to economic burdens because "all classes of providers appear to have the technical capability to deliver closed captioning to viewers intact."<sup>2</sup> This conclusion ignores the substantial regulatory and economic burdens that

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<sup>1</sup> *Notice*, ¶ 130.

<sup>2</sup> *Notice*, ¶ 85.

small cable will face if the Commission allocates closed captioning compliance to providers. The IRFA neglects to seek comment on a class exemption for small providers.

In consider final closed captioning rules, the Commission should consider the substantial record that it has developed concerning the disparate burdens and costs of regulations on small cable.<sup>3</sup> The Commission has used this record to develop small system rate regulation relief and to make small system adjustments to the revised leased access rules.<sup>4</sup> To fulfill the Commission's obligations under the Regulatory Flexibility Act, it should include in this proceeding its well-developed considerations of small cable's regulatory predicament.

The Commission has gained ample experience in the last four years in addressing the unique circumstances of small cable. As stated in the *Small System Order*:

We acknowledge that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition. Since passage of the 1992 Cable Act, the Commission has worked continuously with the small cable industry to learn more about their legitimate business needs and how our rate regulations might better enable them to provide good service to subscribers while charging reasonable rates.<sup>5</sup>

In its reply comments, SCBA requests that the Commission apply to this proceeding the experience gained in addressing the issues of small cable. SCBA has proposed practical and reasonable approaches for minimizing regulatory burdens on small cable while advancing the goals of Section 713.

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<sup>3</sup> *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215, FCC 95-196 (released June 5, 1995) ("*Small System Order*").

<sup>4</sup> *Second Report and Order and Second Order on Reconsideration of the First Report and Order*, CS Docket No. 96-60, FCC 97-27 (released February 4, 1997).

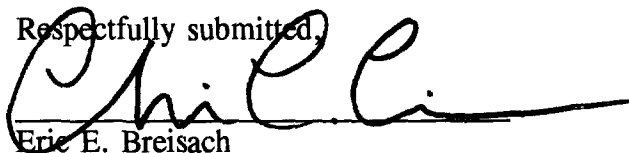
<sup>5</sup> *Small System Order*, ¶ 125.

Specifically, SCBA proposes special rules for small cable including:

1. Allocation of the burden of compliance to programming producers and owners.
2. A class exemption for small cable operators serving 1,000 subscribers or less.
3. Streamlined compliance and complaint rules for small cable systems serving 15,000 subscribers or less including:
  - a. Reliance on statements of compliance from programmers to respond to establish compliance.
  - b. When statements of compliance from programmers show compliance, a burden of proof shift to the complainant to show noncompliance.
4. Streamlined waiver procedures to permit qualifying small systems to access a simplified, low-cost waiver process.
5. A class exemption for PEG programming.
6. A class exemption for local origination programming.

SCBA request that the Commission thoroughly consider the issues impact small cable and issue a comprehensive Final Regulatory Flexibility Analysis in this rulemaking.

Respectfully submitted,



Eric E. Breisach  
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107 W. Michigan Ave., Suite 400  
Kalamazoo, Michigan 49007  
(616) 382-9711

Attorneys for the  
Small Cable Business Association

## CERTIFICATE OF SERVICE

I, Lisa Sheesley, a secretary at the law firm of Howard & Howard Attorneys, P.C., declare that the Comments of the Small Cable Business Association and the Reply Comments to the Initial Regulatory Flexibility Act Analysis, MM Docket No. 95-176, were sent on the 31st day of March, 1997 via fax and Federal Express to:

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

and that in a second Federal Express envelope nine individual envelopes were sent, each containing a copy of the above-referred to document and a copy of the March 31, 1997 letter directed to Mr. Caton. The nine envelopes were addressed as follows:

Ms. Meredith Jones  
Chief  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

Commissioner James Quello  
c/o Mr. Jim Coltharp  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

Mr. John E. Logan  
Acting Deputy Chief  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

Commissioner Rachelle Chong  
c/o Suzanne Toller  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

Mr. William Johnson  
Deputy Chief  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

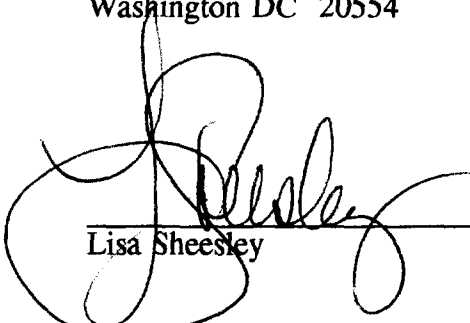
Commissioner Susan Ness  
c/o Karen Gulick  
Cable Services Bureau  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

Chairman Reed Hundt  
c/o Ms. Jackie Charney  
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Marcia Glauberman  
Cable Services Bureau  
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1919 M Street NW  
Washington DC 20554

Dated: March 31, 1997

  
\_\_\_\_\_  
Lisa Sheesley

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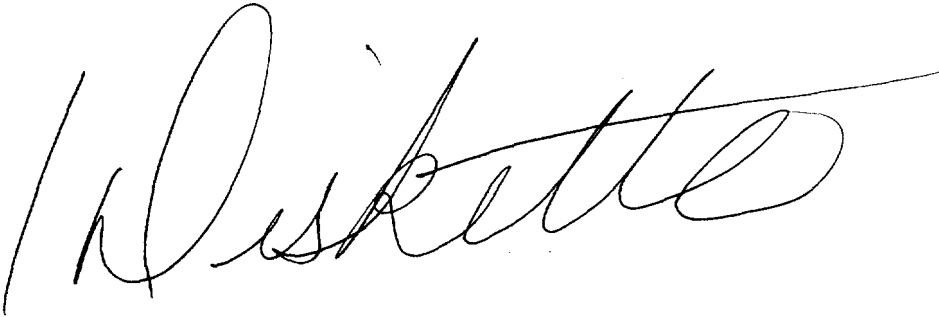
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